

**SUBJECT: ADMINISTERING WORKFORCE DISCIPLINE**

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1. OBJECTIVES. To provide requirements, instructions, and responsibilities for administering and maintaining workforce discipline in the Department of Energy (DOE). This Order supplements current statutory and regulatory requirements for disciplinary, adverse, and performance-based actions; it should be followed in conjunction with those requirements.
2. CANCELLATIONS. DOE 3750.1, *Workforce Discipline*, dated 03-23-83.
3. APPLICABILITY.

- a. DOE Elements. Except for the exclusions in paragraph 3d, this Order applies to all DOE elements (see Attachment 1 for a complete list of DOE Elements). This Order automatically applies to DOE elements created after it is issued.

The National Nuclear Security Administration (NNSA) Administrator will ensure that NNSA employees comply with their respective responsibilities under this Order.

- b. All Employees, including the following.
  - (1) Career Senior Executive Service (SES), Senior-Level (SL), Scientific or Professional (ST), and Excepted Service Pay Band IV (when the employee's basic pay exceeds GS-15 Step 10) and Pay Band V employees.
  - (2) Former DOE employees who meet the time limits for presenting a grievance related to the application of this Order and for whom a remedy can be granted.
- c. DOE Contractors. This Order does not apply to contractors.
- d. Exclusions.
  - (1) DOE elements requesting exclusion from this Order must direct their requests to the director of the Office of Human Capital Management for non-NNSA components or the director of Human Resources Management (NNSA) for NNSA components. Each request must be accompanied by the current local directive being used, which must conform to this Order and all applicable laws, rules, and regulations in effect at the time the request is being made.

- (2) The Bonneville Power Administration, pursuant to Delegation Order 00-033.00A, may exempt itself from the requirements of this Order. However, it will adhere to the requirements of laws and regulations cited in paragraph 7, References, and be subject to oversight regarding compliance with those laws and regulations.
4. REQUIREMENTS. The objective of a disciplinary action is the development, correction, and/or rehabilitation of the employee. Constructive discipline encourages employee acceptance of responsibility and forestalls the development of situations in which there is no alternative to removal of the employee. Corrective action is taken only when necessary and, then, to correct an adverse situation promptly and with equity. The corrective action taken is the minimum necessary to bring about the correction required. Repeated infractions are evidence that the previous disciplinary action was insufficient to bring about correction, and more severe corrective actions will normally be assessed in such cases.
  - a. Deciding on Disciplinary, Adverse, or Performance-Based Actions.
    - (1) Disciplinary actions must be taken only for the purpose of correcting unacceptable conduct; unacceptable behavior on the job; situations that adversely affect job performance; and/or violations of laws, rules, or regulations.
    - (2) Disciplinary actions must be administered as soon as possible after a supervisor becomes aware of an employee's violation of the rules in order to have the maximum corrective effect.
    - (3) The factors described in Attachment 2 must be considered before initiating disciplinary or adverse actions.
    - (4) The servicing human resources office must concur on all letters of reprimand, adverse action proposals and decision letters, and letters of termination before delivery to the employee.
  - b. Notices and Employee Rights.
    - (1) Notices of proposed disciplinary, adverse, or performance-based actions and letters of decision and reprimand must be delivered personally and explained to the employee.
      - (a) An attempt must be made to have the employee acknowledge receipt in writing on a copy of the notice.
      - (b) In cases where it is difficult or impossible to reach the employee in person, the notice must be transmitted by certified or registered mail, return receipt requested, and a copy sent via regular mail.

- (2) Employees will be given no less than 7 days to respond to notices of proposed disciplinary actions and 14 days to respond to notices of proposed adverse actions and performance-based actions.
  - (a) An employee may be accompanied by a representative when making an oral reply to a notice of proposed action as entitled by regulation (see reference 7d).
  - (b) If an employee of the Department is selected as a representative and that person is willing to serve, the representative's supervisor, acting independently or in concert with the supervisor of the employee responding to the proposed action, may disallow the employee serving as a representative only on the basis that the employee's activities as a representative would—
    - 1 cause a conflict of interest or position,
    - 2 give rise to unreasonable costs to the Government, or
    - 3 interfere with the individual's priority work assignments.
- (3) Unless proposed by the Secretary/designee, all final decisions to take disciplinary and/or adverse actions (including reductions in grade and removals based on unacceptable performance) must be made by a higher level official in the chain of command than the official who proposed the action.

c. Record Keeping.

- (1) Documentation of actions taken under this Order must be sent to the servicing human resources office for retention. Submissions will include the following:
  - (a) copies of the notice of proposed action;
  - (b) the written response of the employee or a summary of the meeting, made by the supervisor, if the response was made orally;
  - (c) the decision notice;
  - (d) a copy of any Order affecting the action;
  - (e) a complete record of all circumstances of the case, including the date of delivery of notices and the sequence of any pertinent events; and
  - (f) any other supporting material.

- (2) Notices of reprimand must be filed on the left (temporary) side of the employee's official personnel folder (OPF) for a period not to exceed 1 year or until the employee leaves DOE, whichever is earlier, or they may be removed earlier if the official issuing the notice so directs.
  - (3) Office of Personnel Management (OPM) Standard Form 50, "Notification of Personnel Action," recording any disciplinary or adverse action resulting in loss of pay or grade must be maintained as a permanent record in the employee's OPF.
- d. Supplementing This Order. This Order will not be supplemented without prior approval from the Deputy Secretary of Energy. (This does not apply to re delegating responsibility except as noted in this Order.)

5. RESPONSIBILITIES.

- a. Secretary/Designee serves as both the proposing and reviewing official for all final decisions related to disciplinary, adverse, and performance-based actions of employees who report **directly** to this position.
- b. Secretary/Designee or NNSA Administrator/Designee serves as the reviewing official on final decisions related to disciplinary and/or adverse actions involving members of the career SES, Excepted Service Pay Band IV (when the employee's basic pay exceeds GS-15 Step 10) and Pay Band V employees, and SL or ST employees based on recommendations from the applicable executive resources board.
- c. Heads of DOE Elements, Including NNSA.
  - (1) Administer the workforce discipline program within their jurisdictions.
  - (2) Ensure that workplace requirements and other conditions of employment are readily available to all employees within their jurisdictions.
  - (3) Ensure that supervisors and management officials consider the factors in Attachment 2, and when the limitation on corrective actions is to be exceeded, ensure that it is properly authorized.
  - (4) Issue notices of decision on adverse actions proposed by subordinate officials against employees within their jurisdictions.
  - (5) Approve or disapprove requests to extend the time to answer notices of proposed actions.
  - (6) Approve or disapprove requests to extend the notice of proposed action, not to exceed 30 additional days, in cases of reduction in grade and in cases of removal based on unacceptable performance.

- (7) Sign and direct all redelegations of responsibilities in this Order to the director of the Office of Human Capital Management for non-NNSA components or the director of Human Resources Management (NNSA) for NNSA components.
- d. Director, Office of Management, Budget and Evaluation or Deputy Associate Administrator for Management and Administration (NNSA) provides overall administration of the Department's workforce discipline program.
- e. Director, Office of Human Capital Management or Director, Human Resources Management (NNSA).
  - (1) Develops the workforce discipline program of the Department and provides staff assistance, advice, and oversight on matters covered by this Order.
  - (2) Authorizes requests for exceptions to this Order from organizations under his/her cognizance. Each request for exception will include the current local directive that conforms to this Order and all applicable laws, rules, and regulations at the time the request is made.
  - (3) Implements actions directed by OPM and other outside authorities.
  - (4) Provides recommendations to servicing human resources offices on determinations as to whether or not to seek review of initial decisions rendered by presiding officials of the Merit Systems Protection Board.
  - (5) Requests OPM approval to extend the notice period for a reduction in grade or removal based upon unacceptable performance beyond the additional 30 days granted by heads of DOE elements (paragraph 5c6).
  - (6) Reviews, in conjunction with the Office of General Counsel, and approves requests recommended by servicing human resources offices to petition the Merit Systems Protection Board for review of initial decisions of presiding officials.
  - (7) In coordination with the Office of General Counsel, determines whether or not to request OPM to seek judicial review of full Merit Systems Protection Board decisions.
- f. Office of General Counsel reviews and concurs on all petitions for payment of attorney's fees for compliance with statutory and regulatory requirements.
- g. Chief Counsel of a Field Organization provides legal advice and assistance to servicing human resources offices and, in coordination with servicing human resources offices, represents or participates in the preparation for representation of DOE before the Merit Systems Protection Board.

h. Servicing Human Resources Offices.

- (1) Review all proposed disciplinary, adverse, and performance-based actions for consistency with rules, regulations, and Departmental procedures.
- (2) Provide technical advice and assistance to supervisors and management officials in the implementation of this program.
- (3) Provide procedural advice and assistance to employees who are subject to disciplinary or adverse actions.
- (4) Provide notice to the director of the Office of Human Capital Management for non-NNSA components or the director of Human Resources Management (NNSA) for NNSA components and coordinate with the Office of General Counsel or chief counsel of a field organization to arrange for representation of the Department at hearings before the Merit Systems Protection Board.
- (5) In conjunction with the Chief Counsel or Office of General Counsel, submit to the director of the Office of Human Capital Management for non-NNSA components or the director of Human Resources Management (NNSA) for NNSA components requests to petition the Merit Systems Protection Board to review initial decisions of presiding officials. Such requests must arrive as soon as possible after receipt of the initial decision.
- (6) Retain records of actions as described in paragraph 4c.

i. Supervisors, Managers, and Team Leaders with Authority to Initiate Discipline.

- (1) Keep employees informed of rules, regulations, standards of conduct, and their rights as they relate to employment and maintain order and discipline within the framework of established procedures.
- (2) Consult with the servicing human resources office before issuing notices of reprimand or initiating proposals for disciplinary, adverse, or performance-based actions.
- (3) Consider Attachment 2 when initiating disciplinary or adverse actions.

6. DEFINITIONS.

- a. Adverse Action. A personnel action which gives the affected employee the right to appeal to the Merit Systems Protection Board under its regulations (cited in 7c). Adverse actions may result from disciplinary or nondisciplinary situations.

- b. Deciding Official. The management official designated to make the final decision on a notice of proposed action issued by a Department official at a lower management level.
- c. Issuing Official. The supervisor or manager who issues the formal notice/letter of reprimand/disciplinary action to an employee.
- d. Proposing Official. The supervisor or manager who issues a notice of proposed action to an employee.
- e. Reprimand. A formal disciplinary action notice issued to an employee by a management official or supervisor having disciplinary authority with respect to that employee.

7. REFERENCES.

- a. Title XXXII of P.L. 106-65, National Nuclear Security Administration Act, as amended, which establishes a separately organized agency within the Department of Energy.
- b. Title 5 United States Code (U.S.C.), Chapter 43—Performance Appraisal.
- c. Title 5 U.S.C., Chapter 75—Adverse Actions.
- d. Title 5 U.S.C., Chapter 77—Appeals.
- e. Title 5 Code of Federal Regulations (CFR), Chapter II, which provides the procedures for appealing an Agency’s adverse action to the Merit Systems Protection Board.
- f. Title 5 CFR, Parts 432 and 752, which provide the procedures for disciplinary, adverse, and performance based actions. They also define many of the terms used in the administration of workforce discipline.
- g. Title 5 CFR, Part 735, which establishes ethical and other conduct standards and responsibilities for Federal employees.
- h. DOE G 3710.1, *Department of Energy Labor-Management Relations*, dated 1-12-95, which outlines procedures for the administration of the Federal employee labor relations program.
- i. DRAFT DOE O 342.X, *Grievance Policy And Procedures*, which provides requirements and instructions for the administrative grievance system in DOE by which nonbargaining unit employees may grieve disciplinary actions not covered by Merit System Protection Board procedures.

- j. Local collective bargaining agreements that contain the sole procedure for bargaining unit employees to grieve disciplinary actions and, if negotiated, actions covered by the Merit Systems Protection Board.
8. CONTACT. Questions concerning this Order should be addressed to the Human Capital Management Strategic Planning and Vision Office (Headquarters), Office of Management, Budget and Evaluation, at 202-586-3380.

SAMUEL W. BODMAN  
Secretary of Energy



**DEPARTMENT OF ENERGY ELEMENTS,  
AND BY AGREEMENT THE NATIONAL NUCLEAR SECURITY ADMINISTRATION,  
TO WHICH DOE O 333.1 IS APPLICABLE**

Office of the Secretary  
Office of the Chief Information Officer  
Office of Civilian Radioactive Waste Management  
Office of Congressional and Intergovernmental Affairs  
Office of Counterintelligence  
Departmental Representative to the Defense Nuclear Facilities Safety Board  
Office of Economic Impact and Diversity  
Office of Electricity Delivery and Energy Reliability  
Office of Energy Efficiency and Renewable Energy  
Energy Information Administration  
Office of Environment, Safety and Health  
Office of Environmental Management  
Office of Fossil Energy  
Office of General Counsel  
Office of Hearings and Appeals  
Office of Independent Oversight and Performance Assurance  
Office of the Inspector General  
Office of Intelligence  
Office of Legacy Management  
Office of Management, Budget and Evaluation/Chief Financial Officer  
Office of Nuclear Energy, Science and Technology  
Office of Policy and International Affairs  
Office of Public Affairs  
Office of Science  
Secretary of Energy Advisory Board  
Office of Security  
Office of Security and Safety Performance Assurance  
Southeastern Power Administration  
Southwestern Power Administration  
Western Area Power Administration

## **FACTORS THAT MUST BE CONSIDERED WHEN TAKING DISCIPLINARY ACTIONS**

1. The nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional, technical, or inadvertent; was committed maliciously or for gain; or was frequently repeated.
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.
3. The employee's past disciplinary record.
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties.
6. Consistency of the corrective action with those imposed upon other employees for the same or similar breaches within the organization.
7. Consistency of the corrective action with DOE O 333.1 Attachment 3, "Guide to Selecting Corrective Action in Discipline Cases." [Note: Author is developing this attachment.]
8. The notoriety of the breach or its impact upon the reputation of the Department.
9. The clarity with which the employee was on notice of any rules that were violated in committing the breach or had been warned about the conduct in question.
10. Potential for the employee's rehabilitation.
11. Mitigating circumstances surrounding the offense such as unusual job tensions; personality problems; mental impairment; harassment; or bad faith, malice, or provocation on the part of others involved in the matter.
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Note: Not all of the factors apply in every case. Thus, the relevant factors given the circumstances of each individual case must be considered, and a responsible balance within tolerable limits of reasonableness must be struck. The relevant factors must not be evaluated mechanistically by formula.